

HCS HB 1374 -- BAD FAITH ASSERTIONS OF PATENT INFRINGEMENT

SPONSOR: Cox

COMMITTEE ACTION: Voted "Do Pass" by the Committee on Financial Institutions by a vote of 17 to 0.

This bill prohibits a person from making a bad faith assertion of patent infringement in a demand letter and specifies the factors the court may consider as evidence that a bad faith assertion has or has not been made.

If one or more persons or entities believe that they have been a target of a bad faith assertion, they must have a private right to a cause of action as specified in the bill. If the court makes a finding that a defendant willfully or knowingly made a bad faith assertion of patent infringement, the court may in its discretion increase the monetary award to an amount equal to not more than three times the actual monetary loss from the violation or violations or \$30,000 in damages for each violation, whichever is greater.

The Attorney General's authority to investigate, restrain, and prosecute civil actions under the Missouri Antitrust Law applies to investigating and prosecuting actions brought under these provisions. Monetary awards or settlements recovered by the Attorney General, aside from awards to the target, may be credited to the Antitrust Revolving Fund and be available for the payment of all costs and expenses incurred by the Attorney General in the investigation, prosecution, or enforcement of these provisions.

The provisions of the bill cannot be construed to limit the rights or remedies available to any person or the state under any other law with regard to conduct involving assertions of patent infringement provided that it cannot be an unfair or deceptive trade practice for any person who owns or has the right to license or enforce a patent to notify another of that ownership or right of license or enforcement, to notify another that the patent is available for license or sale, to notify another of the infringement of that patent under the provisions of Title 35 of the United States Code, or to seek compensation on account of a past or present infringement, or for a license, when it is reasonable to believe that the person from whom compensation is sought may owe the compensation.

PROPONENTS: Supporters say that the bill will stop people from making bad faith assertions of patent infringement. Litigation over patent infringement claims is expensive and there are people doing this to extort money for claims that have no value or merit.

Testifying for the bill were Representative Cox; Missouri Bankers Association; Missouri Retailers Association; Missouri Grocers' Association; Google, Inc.; Missouri Society of Certified Public Accountants; and Missouri Insurance Coalition.

OPPONENTS: There was no opposition voiced to the committee.